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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,943	12/29/2003	Neil Keegstra	1122-8	7887
23869	7590	01/23/2006	EXAMINER	
HOFFMANN & BARON, LLP			RADI, JOHN A	
6900 JERICHO TURNPIKE			ART UNIT	
SYOSSET, NY 11791			PAPER NUMBER	

3641

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/748,943	Applicant(s) KEEGSTRA ET AL.	
	Examiner John A. Radi	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

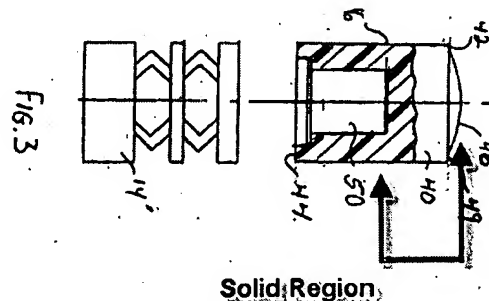
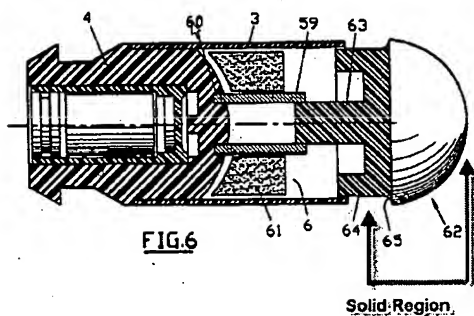
DETAILED ACTION

Response to Arguments

Applicant's arguments filed December 5th, 2005 have been fully considered but they are not persuasive.

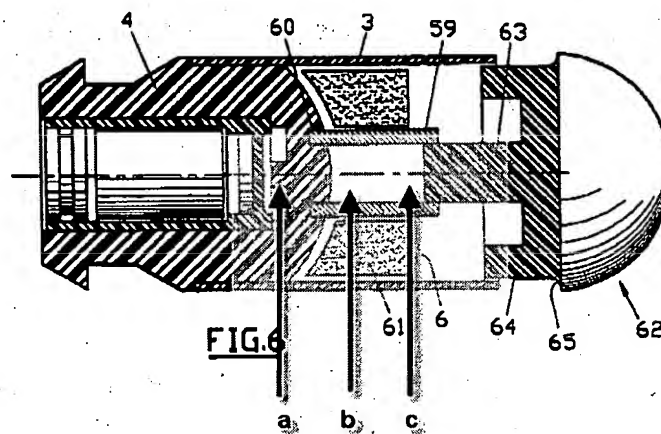
With regard to the argument that Tougeron does not disclose a weight-forward condition, the examiner believes that in Figure 6 it is self-evident that the projectile shifts into a weight-forward situation. When the mass of the nose of the projectile (62) shifts forward, it is inherent that the center of gravity of the projectile moves forward into a weight-forward configuration.

The examiner disagrees with regard to the argument that the nose portion of Tougerons is designed to contain liquid and is therefore not solid. Tougeron's nose portion is solid in the same way that applicant's invention is solid – see applicant's drawings figures 2 and 3 and Tougeron figures 4-6. Examiner defines the nose region of the projectile being from the forward shoulder of the inside cavity (Tougeron: 42, 64) to the tip of the dome.



In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an ogive, the method of dispersion of payload, the use of a unitary v. separate wad) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

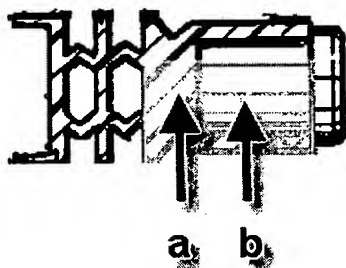
Examiner disagrees that the cavity and motor portions of Tougeron don't bias the weight of the projectile forward. The motor cavity (5) is filled with a propellant and is empty after the projectile is fired, thereby initially moving the center of gravity forward from position "a" to "b." After the nose region of the projectile expands further forward, the center of gravity further moves forward from position "b" to "c."



In response to applicant's argument that Knoster fails to disclose a less than lethal projectile, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's argument that the unitary seal/wad of Knoster is not a projectile, applicant is directed to Knoster figure 10 and associated description (col. 2 line 57) which asserts that the sabot pressure wad impacts the target.

In response to applicant's argument that the hollow region of Knoster is not dome topped or forward weighted, the examiner respectfully disagrees. The projectile disclosed by Knoster includes the unitary pressure wad/seal (12) and the payload (16) which rests inside the hollow cavity. Once fired, the hollow portions of the wad (28) combined with the projectile's mass create a situation in which the projectile is forward weighted (the center of gravity "b" is forward of the geometric center "a").



Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Tougeron et al (5,565,649). Tougeron teaches a less-lethal shot gun round comprising: a generally elongate tubular hull (3) having a forward end and an opposed rearward end Claims 1 and 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by (fig. 1)*, a base (4) enclosing said rearward end of said hull', a propellant (17) contained within said base', and a projectile slug (2, 62) carried in said hull, said slug being a generally cylindrical member having an outer cylindrical wall, said slug further including a head/protruding member, surrounded by a rim (65), at a forward end of said cylindrical member (col. 2, line 49) thereby increasing the weight of said slug at said forward end; said slug being formed of a non-metallic material (col. 2, lines 63-65) inherently having a durometer hardness less than conventional (metal) shot gun slug materials.

Claims 1-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Knoster, Jr. (6,067,909). Knoster teaches a projectile (16) having a generally hollow cylindrical body (12) having forward end including said protruding member extending therefrom (36) which is dome shaped (fig. 2)*, a body being formed of a non-metallic material (fig. 7's cross-section showing section for synthetic resin or plastic according to Title 37) having inherently a durometer hardness less than conventional metallic

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rounds', a base (30) enclosing said rearward end; a propellant (50) contained within said base; a wad (32) sealably positioned in rear end; and a projectile slug (16), said slug being a generally cylindrical member having an outer cylindrical wall, said slug further including a head/protruding member (figures 1-5) at a forward end of said cylindrical member thereby increasing the weight of said slug at said forward end; and includes a sabot (12) positioned between said wad and said slug.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tougeron et al (5,565,649) in view of Gibsori et al (6,615,739). Tougeron teach all the limitations of claim 9 except the cylindrical wall is dimpled. Gibson et al teaches a slug with hollow cylindrical bore extending from the rearward end (fig. 1b) where the outer cylindrical wall is dimpled (fig.8a). At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have a dimpled cylindrical wall to promote accuracy and/or distance of the projectile/slug.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached form PTO-892 for other related art disclosing similar type seals and pressure wads.

This is a continuation of applicant's earlier Application No. 10/748943. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Radi whose telephone number is 571-272-5883. The examiner can normally be reached on M-F 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John A. Radi
Patent Examiner
Art Unit 3641


Michael Carone
SPE 3641